

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ASHLEY McCULLOUGH DEDEAR,

Plaintiff,

VS.

TACO BELL OF AMERICA,

Defendants.

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CIVIL NO. 4:18-cv-002107

**DEFENDANT TACO BELL OF AMERICA, LLC'S
NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to 28 U.S.C. §§ 1332, 1441(b) and 1446(a), **Taco Bell of America, LLC**, the Defendant in the above-numbered and styled case, file this Notice of Removal from the District Court of Harris County, Texas, 333rd Judicial District, to the United States District Court for the Southern District of Texas, Houston Division.

INTRODUCTION

1. Plaintiff is Ashley McCullough Dedear ("Plaintiff").
2. The Defendant is Taco Bell of America, LLC ("Defendant").
3. Plaintiff commenced this personal injury lawsuit on June 12, 2018.

Plaintiff asserted various premises liability/negligence claims arising out of her alleged slip-and-fall, on April 16, 2017, at a Taco Bell restaurant located at 7502 Highway 6 North in Houston, Texas.

A. Venue is proper.

4. Pursuant to 28 U.S.C. § 1441(a), this action may be removed to this Court because it is the district and division embracing Harris County, Texas, the county in which the state court action is pending.

B. Removal is timely.

5. Plaintiff obtained service of process upon Defendant on June 12, 2018. Defendant is therefore timely filing this Notice of Removal, as they are removing this action “within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3).

C. Complete diversity of citizenship exists.

6. This is a civil action that falls under the Court’s original jurisdiction pursuant to 28 U.S.C. § 1332(a) and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446. Complete diversity exists in this case because Plaintiff and Defendant are citizens of different states.

(i) Plaintiff

7. As stated in Plaintiff’s Original Petition, Plaintiff is an individual residing in Harris County, Texas. Thus, at the time Plaintiff commenced this action, she was a citizen of the State of Texas.

(ii) Defendant

8. Defendant is a limited liability company formed under the laws of the state of Delaware, having its principal place of business now and at the time this action was commenced in Irvine, California. The citizenship of a limited liability company, however, is determined by the citizenship of all of its members. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). Defendant's sole member is YUM! Brands, Inc., a North Carolina corporation with its principal place of business in Louisville, Kentucky. Thus, at the time this action was commenced, Defendant was a citizen of the states of North Carolina and Kentucky, and of no other state.

E. The amount in controversy exceeds \$50,000.

9. Plaintiff alleges in Plaintiff's Original Petition that she seeks monetary relief in an amount of "more than \$100,000." Pl.'s Orig. Pet. ¶ 1.

10. Plaintiff therefore seeks damages, exclusive of interest and attorney's fees, in excess of the jurisdictional minimum of \$75,000.

F. Removal is appropriate under the Court's diversity jurisdiction.

11. In light of these facts, the state court claim may be removed to this Court because: (a) this action is a civil action pending within the jurisdiction of the United States District Court for the Southern District of Texas; (b) none "of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought," 28 U.S.C. § 1441(b)(2); and (b) the amount in controversy exceeds \$75,000, exclusive of interests and costs.

FILING OF REMOVAL PAPERS

12. Pursuant to 28 U.S.C. § 1446(d), Defendant is providing written notice of the filing of this Notice of Removal to all other counsel of record. Further, such Defendant is filing a copy of this Notice of Removal with the Clerk of the 333th Judicial District Court of Harris County, Texas, where Plaintiff commenced this action.

13. Defendant is filing the following items concurrently with this Notice of Removal, or attaching them to this Notice of Removal as required by Southern District of Texas Local Rule 81: (a) a completed civil cover sheet, JS-44 (**Exhibit 1**); (b) all executed process in the case (**Exhibit 2**); (c) all pleadings asserting causes of action (**Exhibit 3**); (d) any orders signed by the state judge (**none**); (e) a copy of the docket sheet in the state court action (**Exhibit 4**); and (f) a list of all counsel of record (**Exhibit 5**).

CONCLUSION

14. Defendant Taco Bell of America, LLC, gives notice to the Court of its removal of the above-captioned action from the 333th Judicial District Court of Harris County, Texas, and requests that further proceedings be conducted in the United States District Court for the Southern District of Texas, Houston Division, as provided by law.

Dated: June 22, 2018

Respectfully submitted,

/s/ William R. Pilat

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CERTIFICATE OF SERVICE

I certify that on June 22, 2018, a true and correct copy of the foregoing pleading was forwarded to all other counsel of record, as listed below, through the electronic case filing system of the United States District Court for the Southern District of Texas:

Brian H. Crockett
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/s/ William R. Pilat

William R. Pilat